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The Honorable Mary Jo Heston
United States Bankruptcy Court
Chapter 11 Proceeding

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WASHINGTON

In re: PAUL JOE, Debtor.	Case No. 17-41216-MJH DEBTOR'S MOTION FOR ENTRY OF ORDER AUTHORIZING USE OF CASH COLLATERAL **Expedited Hearing Requested**

Pursuant to Section 363(c) of Title 11 of the United States Code (the "Bankruptcy Code"), Rule 4001(b) of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"), and LBR 4001-2, Paul Joe, the Debtor-in-Possession ("DIP") moves this Court for entry of a final order authorizing the DIP to use cash collateral during the pendency of his case after a final hearing held pursuant to Bankruptcy Rule 4001(b)(2). The Proposed Order is attached as Exhibit A (the "Order"); In support of his Motion, the DIP states as follows:

BACKGROUND

1. On March 30, 2017 (the "Petition Date"), the DIP filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

2. The DIP has continued in possession of his property and is continuing to operate and manage his business as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this case.

3. The Court has jurisdiction over this matter pursuant to 28 USC §§ 1408 and 1409. This is a core proceeding pursuant to 28 USC § 157(b)(2)(M).

4. The DIP borrowed money from Hampton Heights, L.L.C. ("Lender"), the DIP's prepetition lender, pursuant to a promissory note dated June 17, 2010 from Paul Joe to Hampton Heights, L.L.C. in the original principal amount of $1,100,000.

5. In connection with that loan, the DIP executed a Deed of Trust on June 17, 2010 (the "Deed of Trust").

6. Pursuant to the Deed of Trust, Lender has a lien on the real property owned by the DIP (the "Real Property") in the amount of approximately $1.2 million. The Real Property is valued at $2.5 million in the Debtor's schedule A, giving the Lender more than a 100% equity cushion.

7. The Lender also asserts that the rents (the "Rents") from Bing's Restaurant, the tenant of the restaurant building located on the Real Property, are the Lender's cash collateral ("Cash Collateral") pursuant to the terms of the Deed of Trust.

8. The DIP's sole source of income is the Rents.

9. No party other than the Lender asserts an interest in the Rents.

RELIEF REQUESTED

10. The DIP seeks to use a portion of the Cash Collateral pursuant to Sections 105(a) and 363(c)(2) of the Bankruptcy Code and the terms and conditions of the Order, to pay the

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DIP's continuing operating expenses, including his Chapter 11 administrative expenses, as outlined in the proposed budget attached as Exhibit B.

BASIS FOR RELIEF REQUESTED

11. The DIP requires use of Cash Collateral to meet his basic living expenses, to preserve and maintain the assets of the bankruptcy estate, and to pay certain administrative expenses. Without use of such Cash Collateral, the DIP will lack sufficient funds to live and to propose and confirm a plan of reorganization in this case.

12. The DIP seeks to use only a relatively small portion of the Cash Collateral. Specifically, as provided in the Budget attached here as Exhibit B, out of the $7,254.00 monthly rent payments he receives from Bing's Restaurant, the DIP proposes to spend $2,500 on his regular monthly living expenses and to deposit the remaining $4,754 into the DIP bank account as a reserve from which to pay amounts pursuant to the DIP's plan of reorganization and to pay quarterly US Trustee fees.

13. A debtor in possession may not use cash collateral unless the court authorizes such use after notice and a hearing. 11 USC § 363(c)(2)(B).

REQUEST FOR A FINAL HEARING

14. A final hearing on a request for authority to use Cash Collateral may only be commenced after fourteen days' notice under Bankruptcy Rule 4001(b). At the final hearing, the court shall "condition such use… as is necessary to provide adequate protection of" the creditor's interest in the Cash Collateral. The DIP requests a final hearing on this motion on the date specified in his Notice of Motion. At the final hearing, the Court should enter the DIP's Proposed Order granting his limited use of the Cash Collateral because the Lender is significantly over secured in the property, the replacement liens proposed by the DIP are reasonable, and the

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amount of Cash Collateral sought to be used by the DIP is very small considering the amount of the Lender's claim.

NOTICE

15. Pursuant to FRBP 4001(b)(1)(C) the DIP has provided notice of this Motion to each of his unsecured creditors, Lender, all creditors requesting special notice, and the Office of the United States Trustee. Additionally, the DIP has given notice to the parties listed in Bankruptcy Rule 4001-3. No unsecured creditors' committee has been appointed in this case. The DIP submits that no other or further notice is required under the circumstances.

WHEREFORE, the DIP requests that this Court enter the Order attached hereto as Exhibit A after a final hearing held pursuant to Bankruptcy Rule 4001(b)(2).

Dated: May 15, 2017

/s/ Nicholas J. Henderson
Nicholas J. Henderson, WSBA #44626
Attorneys for Debtor-in-Possession

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EXHIBIT A

PROPOSED ORDER

UNITED STATES BANKRUPTCY COURT

WESTERN DISTRICT OF WASHINGTON

In re: PAUL JOE, Debtor.	Case No. 17-41216-MJH ORDER AUTHORIZING USE OF CASH COLLATERAL AND GRANTING ADEQUATE PROTECTION

This matter came before the Court on the Motion ("Motion") of Paul Joe, the debtor in possession (the “DIP”), pursuant to sections 105, 361, 362, and 363(c) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 4001-3, and 9013-1(d)(2)(E) Local Rules of Bankruptcy Procedure for the Western District of Washington (the “Local Rules”), for the entry of an Order authorizing, on a final basis, the DIP’s use of cash collateral on a final basis pursuant to the Budget specified in the DIP’s Motion and authorizing

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the DIP to grant adequate protection in favor of Hampton Heights, L.L.C. ("Lender") asserting liens ("Prepetition Liens") in substantially all of the Rents of the DIP. The Court has reviewed the files and records herein and makes the following findings of fact:

A. Commencement of Case. On March 30, 2017 (the "Petition Date"), the DIP filed a voluntary petition for relief with this Court, commencing a case (the "Chapter 11 Case") under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Since the Petition Date, the DIP has continued to manage and operate his property and business as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. Jurisdiction and Venue. This Court has jurisdiction over this proceeding and the parties and properties affected hereby pursuant to 28 USC §§ 157(b) and 1334 and this is a core proceeding pursuant to 28 USC § 157(b)(2). Venue is proper in this Court pursuant to 28 USC § 1409.

C. No Creditors' Committee. To date, the United States Trustee has not appointed a committee pursuant to section 1102(a) of the Bankruptcy Code.

D. Prepetition Indebtedness and Security Therefore. The DIP's secured lender is Lender. As of the Petition Date, the amount owed to Lender was approximately $1.2 million. Lender asserts that its claim against the DIP is secured by a valid, enforceable, and properly perfected security interest in the DIP's real property, and in the rents generated by that property (the "Rents").

E. Necessity of Use of Cash Collateral. The DIP is currently unemployed so that the DIP's sole source of income is the Rents, and the DIP asserts that it is necessary for the DIP to use Cash Collateral to meet his basic living expenses, to preserve and maintain the assets of the bankruptcy estate, and to pay certain administrative expenses. Without use of such Cash

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Collateral, the DIP asserts that he will lack sufficient funds to live and to propose and confirm a plan of reorganization in this case. Use of Cash Collateral is necessary to avoid immediate and irreparable harm to the estate.

F. Cause. Entry of this Order will minimize disruption of the DIP's life, preserve the value of the DIP's assets, and is in the best interests of the DIP, his creditors, and his estate.

G. Notice. Notice of this Order has been given to (a) the Office of the United States Trustee, (b) the Lender, (c) all unsecured creditors of the DIP, and (d) all parties requesting special notice pursuant to Bankruptcy Rule 2002. Sufficient and adequate notice of the hearing and the relief requested has been given pursuant to all applicable provisions of the Bankruptcy Code and the Bankruptcy Rules, including, without limitation, Section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002 and 4001.

NOW THEREFORE, the Court being fully advised in the premises, it is hereby ORDERED as follows:

1. The DIP is authorized to use Cash Collateral in accordance with the terms of this Order to pay costs and expenses incurred by the DIP in the ordinary course.

2. The DIP's authority to spend Cash Collateral is limited to the sum of $2,500 per month, plus any quarterly US Trustee's fees incurred in this case. All excess Cash Collateral shall be deposited into the DIP bank account and held pending further Order of this Court.

3. As adequate protection for any Cash Collateral used by the DIP, the Lender is hereby granted, pursuant to sections 361(1) and 363(e) of the Bankruptcy Code, a perfected lien or liens (the "Replacement Liens") in the post-petition Rents, receipts and other income generated from operation of the DIP's real property in which the Lender holds pre-petition liens and security interests, with the same priority as existed in such pre-petition liens and security

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interests as of the Petition Date. These security interests are granted to the Lender for the sole purpose of providing adequate protection to the Lender to protect its allowed secured claim on the Petition Date and are not intended, nor shall they be deemed, to improve the collateral position of the Lender as of the Petition Date.

4. The Replacement Liens granted by this Order shall be deemed perfected and enforceable by operation of law upon execution and entry of this Order by the Court without regard to whether such security interests and liens are perfected under applicable non-Bankruptcy law.

5. Nothing in this Order shall be construed to (a) prejudice a right of any party in interest (including the DIP) to contest the validity, priority, or extent of the liens or security interests of any party in any pre-petition collateral or the proceeds thereof; (b) convert any pre-petition obligations into post-petition obligations; (c) require payment of any obligations on confirmation of a plan of reorganization; (d) alter, improve, limit, or impair the rights, if any, of parties claiming to have rights of reclamation or statutory lien rights against the DIP or his assets; or (e) enhance the secured position of any creditor as of the Petition Date.

6. This Order, and each of its terms, shall be effective immediately upon entry by the Court and the automatic stay of judgment provisions of Bankruptcy Rule 8017(a) shall not apply.

# # #

ORDER PRESENTED BY:

MOTSCHENBACHER & BLATTNER, LLP

/s/ Nicholas J. Henderson
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Of Attorneys for Debtor

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PARTIES TO SERVE

ECF Electronic Service:

- Nicholas J Henderson nhenderson@portlaw.com, csturgeon@portlaw.com;tsexton@portlaw.com
- Kathryn E Perkins kathryn.e.perkins@usdoj.gov, Tara.Maurer@usdoj.gov;young-mi.petteys@usdoj.gov;martha.a.vandraanen@usdoj.gov
- United States Trustee USTPRegion18.SE.ECF@usdoj.gov

Service via First-Class Mail:

- United States Attorney's Office, Attn: Bankruptcy Assistant, 700 Stewart Street, Room 5220, Seattle, WA 98101
- Attorney General for the State of Washington, Bankruptcy and Collections Unit, 800 Fifth Avenue, 20th Floor, Seattle, WA 98104
- Credit Collections Svc, Po Box 773, Needham MA 02494
- Lease Finance Group LLC, 132 West 31st Street, 14th Floor, New York NY 10001
- Ray Klein, Inc., PO Box 7637, Springfield OR 97475
- Wells Fargo Bank, 3275 NW 19th Ave., Portland OR 97210
- Hampton Heights, LLC, c/o Dean N. Alterman, Folawn Alterman & Richardson LLP, 805 SW Broadway, Suite 470, Portland, OR 97205

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EXHIBIT B

CASH COLLATERAL BUDGET

Rent	$1,000
Telephone, cell phone, internet, cable	$60
Food and housekeeping supplies	$400
Clothing and laundry	$200
Personal care products and services	$150
Transportation (including gas)	$300
Entertainment, clubs, recreation	$240
Vehicle insurance	$150
TOTAL MONTHLY BUDGET:	**$2,500**
Estimated Quarterly UST Fee	**$325**

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2017, the foregoing **DEBTOR'S MOTION FOR ENTRY OF ORDER AUTHORIZING USE OF CASH COLLATERAL** was served on the following through the Court's CM/ECF notice processes:

- Kathryn E Perkins kathryn.e.perkins@usdoj.gov, Tara.Maurer@usdoj.gov;young-mi.petteys@usdoj.gov;martha.a.vandraanen@usdoj.gov
- United States Trustee USTPRegion18.SE.ECF@usdoj.gov

I also certify that on May 15, 2017, the foregoing **DEBTOR'S MOTION FOR ENTRY OF ORDER AUTHORIZING USE OF CASH COLLATERAL** was served on the following parties via First Class U.S. Mail:

- United States Attorney's Office, Attn: Bankruptcy Assistant, 700 Stewart Street, Room 5220, Seattle, WA 98101
- Attorney General for the State of Washington, Bankruptcy and Collections Unit, 800 Fifth Avenue, 20th Floor, Seattle, WA 98104
- Credit Collections Svc, Po Box 773, Needham MA 02494
- Lease Finance Group LLC, 132 West 31st Street, 14th Floor, New York NY 10001
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- Wells Fargo Bank, 3275 NW 19th Ave., Portland OR 97210
- Hampton Heights, LLC, c/o Dean N. Alterman, Folawn Alterman & Richardson LLP, 805 SW Broadway, Suite 470, Portland, OR 97205

DATED: May 15, 2017.

MOTSCHENBACHER & BLATTNER, LLP

/s/ Troy G. Sexton
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Of Attorneys for Debtor Paul Joe